IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.Rev.Pet.No. 694 of 1998

CRL.A.403/1994 OF I ADDL.SESSIONS COURT, ERNAKULAM,
CC.125/1990 OF JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

PETITIONER/APPELLANT/ACCUSED:

T.J. JOSEPH,
PROPRIETOR,
M/S. JOHN MEDICALS,
KUNNUMPURAM,
FORT KOCHI - 1.

BY ADV. SRI.SEBASTIAN DAVIS.

RESPONDENTS/RESPONDENTS/COMPLAINANTS:

1. **T.S. PUSHPAJA,**
   DRUG INSPECTOR (ADDL),
   OFICE OF THE REGIONAL DRUGS INSPECTOR,
   OFFICE OF THE CIVIL STATION,
   KOCHI - 30, ERNAKULAM.

2. **STATE OF KERALA,**
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.C. SANTHOSH KUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Crl.R.P.No.694 of 1998

Dated 16th July, 2007

ORDER

This revision petition is filed against the conviction and sentence imposed on the revision petitioner under Rule 65(18) of the Drugs and Cosmetics Rules, 1945 read with Section 27(d) of the Drugs and Cosmetics Act, 1940. When the complainant and another inspector, appointed under the Drugs and Cosmetics Act, inspected the medical shop of the petitioner on 13.10.1987, free samples of packets containing 2 x 1 capsules of ZICAM, 4 x 2 capsules of Ampicilin tablets and 3 x 2 Amoxycillin capsules were found in the drawer of the table kept in the shop of the petitioner. Under Rule 65(18) of the Drugs and Cosmetics Rule, 1945, sample medicines cannot be sold or exhibited for sale and, therefore, he was charged for the above offences. Under Section 18(c) also except with a licence nobody can manufacture or sell or stock or distribute any drug. The contention of the petitioner was that these medicines taken out from the drawer of his table were not exhibited for sale or distribution. The medicines and other drugs intended for sale were kept in the shelf and the medicines taken from the drawer were not at all exhibited. His case is that his

brother-in-law (DW2) was present in the shop and those sample medicines were given free of cost by DW1 doctor to DW2 and while he came to meet him in the shop, those medicines were kept in the drawer of the table. DW1 doctor gave clear evidence that those sample medicines were given free of cost to DW2 and DW2 also stated that he came and talking with the petitioner in the shop and those medicines were kept in the drawer. It cannot be positively stated that those medicines were kept for distribution or sale. There is no complaint from any customer that the petitioner sold sample medicines to them. The medicines were kept inside his personal drawer and DW2 was also present at the time of inspection. I am of the opinion that there is no reason to disbelieve the evidence of DW1 and DW2. Therefore, the offence under Rule 65(18) of the Drugs and Cosmetics Rules, 1945 is not proved beyond reasonable doubt. Hence, he cannot be convicted under Rule 65(18) of the Drugs and Cosmetics Rules read with Section 27(d) of the Drugs and Cosmetics Act and his conviction and sentence are set aside.

The revision petition is allowed.

J.B.KOSHY
Judge

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